

September 2003

Update: Juvenile Traffic Benchbook

CHAPTER 2

Obtaining Custody of a Juvenile Following a Criminal Traffic Offense

2.2 Required Procedures After Taking Juvenile Into Custody for a “Drunk Driving” Offense

B. Chemical Testing of Blood, Breath, or Urine

Effective September 30, 2003, 2003 PA 61 amends MCL 257.625c. Beginning on the bottom of page 2-4, replace the quotation of MCL 257.625c(1) with the following:

“(1) A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood or urine or the amount of alcohol in his or her breath in all of the following circumstances:

“(a) If the person is arrested for a violation of section 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8), section 625a(5), or section 625m.*

“(b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe the person was operating the vehicle in violation of section 625.”

*See Chapter 9 for a description of some of these offenses.

CHAPTER 9

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

9.11 Section 625(1) and (8) Offenses—OUIL, OUID, UBAL, OWPD

Effective September 30, 2003, 2003 PA 61 amends §625 offenses. On page 9-20, change the title of the section as indicated above, and replace the introductory paragraph in Section 9.11 and all of subsections (A), (B), and (C) with the following text:

This section addresses four of the driving offenses contained in §625. The offenses all involve operating a motor vehicle while under the influence of alcoholic liquor, a controlled substance, or both, or with an unlawful bodily alcohol level or the presence of a controlled substance in the body. The four offenses are:

- ♦ Operating a motor vehicle while under the influence of alcoholic liquor (OUIL).
- ♦ Operating a motor vehicle while under the influence of a controlled substance (OUID).
- ♦ Operating a motor vehicle with an unlawful bodily alcohol level (UBAL).*
- ♦ Operating a motor vehicle with the presence of controlled substance (OWPD).

*UBAL is also referred to as UBAC, operating a motor vehicle with an unlawful bodily alcohol *content*.

All four offenses are subject to the same penalties.

A. Statute

“(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, ‘operating while intoxicated’ means either of the following applies:

“(a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

“(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

. . . .

“(8) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in . . . MCL 333.7214.

“(9) If a person is convicted of violating subsection (1) or (8), all of the following apply:

“(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 360 hours.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not less than \$100.00 or more than \$500.00.

“(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(ii) Community service for not less than 30 days or more than 90 days.

“(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

“(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.”

MCL 257.625(1), (8), and (9)(a)–(d).

In addition to the penalties set forth above, the court may order the offender to pay the costs of prosecution. MCL 257.625(13).

2003 PA 61 changed the terminology in the drunk driving statutes from “intoxicating liquor” to “alcoholic liquor.” “Alcoholic liquor” is defined as “any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which are fit for use for beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in [the Michigan Liquor Control Code of 1998].” MCL 257.1d and MCL 436.1105(2).

B. Elements

Note: The following criminal jury instructions may be used in cases involving these offenses:

CJ2d 15.1 OUIL/UBAC Violation

CJ2d 15.2 Elements Common to OUIL, UBAC, and OWI

CJ2d 15.3 Specific Elements of OUIL/UBAC

CJ2d 15.4 Specific Elements of OWI

CJ2d 15.5 Factors in Considering OUIL, UBAC, and OWI

NOTE: The revised statutory language effective September 30, 2003 **eliminated the rebuttable presumptions of impairment** arising from a defendant’s bodily alcohol content. The previous statutory language in MCL 257.625a(9) provided for a rebuttable presumption of impairment based on a defendant’s bodily alcohol content. The amended statute contains no such language and consequently, for offenses committed on or after September 30,

2003, portions of CJI2d 15.5 will represent an incorrect statement of the relevant law.

CJI2d 15.6 Possible Verdicts

CJI2d 15.7 Verdict Form

CJI2d 15.9 Defendant's Decision to Forgo Chemical Testing

1. Operating a Motor Vehicle Under the Influence of Alcoholic Liquor and/or a Controlled Substance (OUIL, OUID)

- 1) Defendant, whether licensed or not, operated a motor vehicle on the date in question.
- 2) Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking.
- 3) At the time defendant operated the motor vehicle, defendant was under the influence of alcoholic liquor, a controlled substance, or a combination of both.
- 4) As a result, the defendant was substantially deprived of normal control or clarity of mind.*
- 5) Defendant was no longer able to operate a vehicle in a normal manner.

2. Operating a Motor Vehicle with an Unlawful Bodily Alcohol Level (UBAL)

- 1) Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking.
- 2) At the time of operating the motor vehicle, defendant had an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.*

3. Operating a Motor Vehicle with the Presence of a Controlled Substance (OWPD)

- 1) Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking.
- 2) At the time of operating the motor vehicle, defendant had in his or her body any amount of one of the controlled substances listed in either:
 - Schedule 1 under MCL 333.7212 (or a rule promulgated under that section); or

*This element was set for by the Court of Appeals in *People v Raisanen*, 114 Mich App 840, 844 (1982).

*On October 1, 2013, the blood alcohol levels necessary for a UBAL conviction will revert to the prior level of 0.10. See 2003 PA 61.

- MCL 333.7214.

C. Licensing and Vehicle Sanctions

1. First-time Offenders

If the offender has no prior convictions within seven years, the Secretary of State must suspend his or her license for 180 days. MCL 257.319(8)(a). After the first 30 days of the suspension have elapsed, the Secretary of State may issue a restricted license during a specified portion of the suspension, if the person is otherwise eligible for a license. MCL 257.319(8)(a) and (15).

The Secretary of State will assess six points for a violation of §625(1) or (8). MCL 257.320a(1)(c).

Upon conviction of a violation of §625(1) or (8) (or a local ordinance that substantially corresponds with it), the court may order vehicle immobilization for not more than 180 days, unless vehicle forfeiture is ordered. MCL 257.904d(1)(a) and 257.625(9)(e).

2. Offenders Who Violate §625(1) or (8) Within Seven Years of a Prior Conviction

Under MCL 257.303(2)(c) and (4), offenders convicted of violating §625(1) or (8) within seven years of another prior conviction listed in the statute will be subject to mandatory driver's license revocation for a minimum of one year. The Secretary of State must revoke the licenses* of §625(1) or (8) offenders who have one prior conviction for a violation or attempted violation of any of the following:

- ♦ OUIL, OUID, or UBAL, under §625(1).
- ♦ OWI, under §625(3).
- ♦ OUIL, OUID, UBAL, OWI, or OWPD causing death of another under §625(4).
- ♦ OUIL, OUID, UBAL, OWI, or OWPD causing serious impairment of a body function of another, under §625(5).
- ♦ Being under 21 years of age and operating a vehicle with any bodily alcohol content, under §625(6) ("zero tolerance").
- ♦ Child endangerment, under §625(7).
- ♦ OWPD, under §625(8).
- ♦ Any prior enactment of §625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.

*If the offender does not have a driver's license, the Secretary of State must deny issuance of a license to the offender.

- ◆ Former §625b, which provided criminal penalties for OWI.
- ◆ Operating a commercial motor vehicle with an unlawful bodily alcohol level, under §625m.

For a conviction under §625(1) or (8) within seven years after a prior conviction, the court shall order vehicle immobilization for not less than 90 days or more than 180 days. MCL 257.904d(1)(c). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n.

3. Offenders Who Violate §625(1) or (8) Within Ten Years of Two or More Prior Convictions

Under MCL 257.303(2)(g) and (4), offenders convicted of violating §625(1) or (8) within ten years of two other prior convictions listed in the statute will be subject to mandatory driver's license* revocation for a minimum of five years. The Secretary of State must revoke the licenses of §625(1) or (8) offenders who have two prior convictions of the following violations or attempted violations, if the convictions resulted from arrest on or after January 1, 1992:

- ◆ OUIL, OUID, or UBAL, under §625(1).
- ◆ OWI, under §625(3).
- ◆ OUIL, OUID, UBAL, OWI, or OWPD causing death of another, under §625(4).
- ◆ OUIL, OUID, UBAL, OWI, or OWPD causing serious impairment of a body function of another, under §625(5).
- ◆ Being under 21 years of age and operating a vehicle with any bodily alcohol content, under §625(6) ("zero tolerance"). (Only one zero tolerance violation may be considered for purposes of license revocation under the statute.)
- ◆ Child endangerment, under §625(7).
- ◆ OWPD, under §625(8).
- ◆ Any prior enactment of §625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.
- ◆ Former §625b, which provided criminal penalties for OWI.
- ◆ Operating a commercial motor vehicle with an unlawful bodily alcohol level, under §625m.

*If the offender does not have a driver's license, the Secretary of State must deny issuance of a license to the offender.

For a conviction under §625(1) or (8) within ten years after two or more prior convictions, the court shall order vehicle immobilization for not less than one year or more than three years, unless the vehicle is forfeited. MCL 257.904d(1)(d). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n.

CHAPTER 9

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

9.11 Section 625(1) and (8) Offenses—OUIL, OUID, UBAL, OWPD

D. Issues

Delete the first paragraph at the top of page 9-26. 2003 PA 61 eliminated MCL 257.625a(9), which contained presumptions applicable to drunk driving cases.

CHAPTER 9

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

9.12 Operating While Visibly Impaired (OWI)—§625(3)

Effective September 30, 2003, 2003 PA 61 amends §625 offenses. Beginning on page 9-26, replace the introductory paragraph and subsections (A), (B), and (C) with the following text:

This section addresses the elements of and sanctions for offenses under §625(3), operating a vehicle while visibly impaired. OWI is a lesser offense of OUIL/OUID and UBAL, so that a defendant charged with OUIL, OUID, or UBAL may be found guilty of OWI. MCL 257.625(3).

A. Statute

“(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the person’s ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

....

“(11) If a person is convicted of violating subsection (3), all of the following apply:

“(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 360 hours.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not more than \$300.00.

“(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00, and 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(ii) Community service for not less than 30 days or more than 90 days.

“(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

“(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.”

MCL 257.625(3) and (11)(a)–(d).

In addition to the penalties set forth above, the court may order the offender to pay the costs of prosecution. MCL 257.625(13).

2003 PA 61 changed the terminology in the drunk driving statutes from “intoxicating liquor” to “alcoholic liquor.” “Alcoholic liquor” is defined as “any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which are fit for use for beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in this [the Michigan Liquor Code of 1998].” MCL 257.1d and MCL 436.1105(2).

B. Elements

Note: The following criminal jury instructions may be used in OWI cases:

CJI2d 15.2 Elements Common to OUIL, UBAC, and OWI

CJI2d 15.4 Specific Elements of OWI

CJI2d 15.5 Factors in Considering OUIL, UBAC, and OWI

Note: The revised statutory language effective September 30, 2003, **eliminated the rebuttable presumptions of impairment** arising from a defendant's bodily alcohol content. The previous statutory language in MCL 257.625a(9) provided for a rebuttable presumption of impairment based on a defendant's bodily alcohol content. The amended statute contains no such language and consequently, for offenses committed on or after September 30, 2003, portions of CJI2d 15.5 will represent an incorrect statement of the relevant law.

CJI2d 15.6 Possible Verdicts

CJI2d 15.7 Verdict Form

CJI2d 15.9 Defendant's Decision to Forgo Chemical Testing

The elements of OWI are as follows:

- 1) Defendant, whether licensed or not, operated a motor vehicle on the date in question.
- 2) Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles.
- 3) Defendant had consumed alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
- 4) Because of the consumption of alcoholic liquor and/or a controlled substance, defendant's ability to operate the vehicle was visibly impaired.

C. Licensing and Vehicle Sanctions

1. First-time Offenders

If there are no prior convictions within seven years and the offender's impairment was due to alcohol alone, the Secretary of State shall suspend the offender's license for 90 days. The period of suspension is increased to 180 days if the impairment was caused by consumption of a controlled substance or a combination of alcoholic liquor and controlled substance. MCL 257.319(8)(b). The offender may be issued a restricted license during all or a specified portion of the suspension, if he or she is otherwise eligible for a license. MCL 257.319(8)(b).

The Secretary of State will assess four points for a violation of §625(3) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(i).

Upon conviction of a first offense under §625(3) or a local ordinance substantially corresponding to it, the court may in its discretion order vehicle

immobilization for not more than 180 days, unless vehicle forfeiture is ordered. MCL 257.904d(1)(a) and MCL 257.625(11)(e).

2. Repeat Offenders—Violation Within Seven Years of One Prior Conviction

Under MCL 257.303(2)(c) and (4), offenders convicted of violating §625(3) within seven years of another prior conviction listed in the statute will be subject to mandatory driver's license* revocation for a minimum of one year. The Secretary of State must revoke the licenses of §625(3) offenders who have one prior conviction of any the following violations or attempted violations:

- ◆ OUIL, OUID, or UBAL, under §625(1).
- ◆ OWI, under §625(3).
- ◆ OUIL, OUID, UBAL, OWI, or OWPD causing death of another, under §625(4).
- ◆ OUIL, OUID, UBAL, OWI, or OWPD causing serious impairment of a body function of another, under §625(5).
- ◆ Being under 21 years of age and operating a vehicle with any bodily alcohol content, under §625(6) ("zero tolerance").
- ◆ Child endangerment, under §625(7).
- ◆ OWPD, under §625(8).
- ◆ Any prior enactment of §625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.
- ◆ Former §625b, which provided criminal penalties for OWI.
- ◆ Operating a commercial motor vehicle with an unlawful bodily alcohol level, under §625m.

For a conviction under §625(3) within seven years after a prior conviction, the court shall order vehicle immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered. MCL 257.904d(1)(c). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n.

*If the offender does not have a driver's license, the Secretary of State must deny issuance of a license to the offender.

3. Repeat Offenders—Violation Within Ten Years of Two or More Prior Convictions

*If the offender does not have a driver's license, the Secretary of State must deny issuance of a license to the offender.

Under MCL 257.303(2)(g) and (4), offenders convicted of violating §625(3) within ten years of two other prior convictions listed in the statute will be subject to mandatory driver's license* revocation for a minimum of five years. The Secretary of State must revoke the licenses of §625(3) offenders who have two prior convictions of the following violations or attempted violations, if the convictions resulted from arrest on or after January 1, 1992:

- ♦ OUIL, OUID, or UBAL, under §625(1).
- ♦ OWI, under §625(3).
- ♦ OUIL, OUID, UBAL, OWI, or OWPD causing death of another, under §625(4).
- ♦ OUIL, OUID, UBAL, OWI, or OWPD causing serious impairment of a body function of another, under §625(5).
- ♦ Being under 21 years of age and operating a vehicle with any bodily alcohol content, under §625(6) ("zero tolerance"). (Only one zero tolerance violation may be considered for purposes of license revocation under the statute.)
- ♦ Child endangerment, under §625(7).
- ♦ OWPD, under §625(8).
- ♦ Any prior enactment of §625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.
- ♦ Former §625b, which provided criminal penalties for OWI.
- ♦ Operating a commercial motor vehicle with an unlawful bodily alcohol level, under §625m.

For a conviction under §625(3) within ten years after two or more prior convictions, the court shall order vehicle immobilization for not less than one year or more than three years, unless the vehicle is forfeited. MCL 257.904d(1)(d). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n.

The Secretary of State must refuse issuance of a certificate of title, a registration, or a transfer of registration for a vehicle if the driver's license of the vehicle's owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d). This provision also applies to co-owners and co-lessees of the vehicle.

CHAPTER 9

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

9.12 Operating While Visibly Impaired (OWI)—§625(3)

D. Issues

Delete the last paragraph on page 9-31 (beginning with “Impairment of ability. . .”) and the quotation from *People v Calvin* on page 9-32. 2003 PA 61 eliminated MCL 257.625a(9), which contained presumptions applicable to drunk driving cases.

CHAPTER 9

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

9.13 “Zero Tolerance” Violations—§625(6)

Effective September 30, 2003, 2003 PA 61 amends §625 offenses. Beginning on page 9-33, replace the text in subsections (A), (B), and (C) with the following:

A. Statute

“(6) A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has any bodily alcohol content. As used in this subsection, “any bodily alcohol content” means either of the following:

“(a) An alcohol content of not less than 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of not less than 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

“(b) Any presence of alcohol within a person’s body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.”

....

“(12) If a person is convicted of violating subsection (6), all of the following apply:

“(a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:

(i) Community service for not more than 360 hours.

(ii) A fine of not more than \$250.00.

“(b) If the violation occurs within 7 years of 1 or more prior convictions, the person may be sentenced to 1 or more of the following:

- (i) Community service for not more than 60 days.
- (ii) A fine of not more than \$500.00.
- (iii) Imprisonment for not more than 93 days.”

MCL 257.625(6) and (12)(a)–(b).

In addition to the penalties set forth above, the court may order the offender to pay the costs of prosecution. MCL 257.625(13).

B. Elements

- 1) The defendant, whether licensed or not, operated a motor vehicle on the date in question.
- 2) The defendant operated the vehicle on a Michigan highway or other place open to the public or generally accessible to motor vehicles, including a designated parking area.
- 3) The defendant was less than 21 years of age.
- 4) The defendant had “any bodily alcohol content.”*

C. Licensing Sanctions

The discussion below sets forth the licensing sanctions imposed for first-time and repeat offenders convicted of violating §625(6). The Vehicle Code imposes no vehicle sanctions (i.e., immobilization or forfeiture) for §625(6) violations.

1. First-time Offender

After a violation of §625(6), the Secretary of State must suspend a person’s driver’s license for 30 days if the person has no prior convictions within seven years. MCL 257.319(8)(c). The Secretary of State may issue the person a restricted license during all or a specified portion of suspension, if the person is otherwise eligible for a license. MCL 257.319(8)(c) and (15).

The Secretary of State will assess four points for a violation of §625(6) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(i).

2. Second-time Offenders of §625(6)

If the person has one or more prior convictions of §625(6) within seven years, the Secretary of State must suspend a person’s driver’s license for 90 days upon conviction of another violation of §625(6). MCL 257.319(8)(d). There

*See Section 9.13(A) for the definition of “any bodily alcohol content.”

is no provision in the statute for issuing a restricted license to persons subject to this 90-day suspension.

The Secretary of State will assess four points for a violation of §625(6) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(i).

3. Offenders Who Violate §625(6) Within Seven Years of a Prior Conviction

Under MCL 257.303(2)(c) and (4), offenders convicted of violating §625(6)* within seven years of another prior conviction listed in the statute will be subject to mandatory driver's license revocation for a minimum of one year. The Secretary of State must revoke the licenses of §625(6) offenders who have one prior conviction of any of the following:

- ♦ OUIL, OUID, or UBAL, under §625(1).
- ♦ OWI, under §625(3).
- ♦ OUIL, OUID, UBAL, OWI, or OWPD causing death of another, under §625(4).
- ♦ OUIL, OUID, UBAL, OWI, or OWPD causing serious impairment of a body function of another, under §625(5).
- ♦ Child endangerment, under §625(7).
- ♦ OWPD, under §625(8).
- ♦ Any prior enactment of §625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.
- ♦ Former §625b, which provided criminal penalties for OWI.
- ♦ Operating a commercial motor vehicle with an unlawful bodily alcohol level, under §625m.

3. Offenders Who Violate §625(6) Within Ten Years of Two or More Prior Convictions

Under MCL 257.303(2)(g) and (4), offenders convicted of violating §625(6) within ten years of two other prior convictions listed in the statute will be subject to mandatory driver's license revocation for a minimum of five years. The Secretary of State must revoke the licenses of §625(6) offenders* who have two prior convictions of the following violations or attempted violations, if the convictions resulted from arrest on or after January 1, 1992:

- ♦ OUIL, OUID, or UBAL, under §625(1).
- ♦ OWI, under §625(3).

*MCL 257.303(2)(c) also includes a conviction of an attempted violation of §625(6).

*This also includes offenders convicted of an attempted violation of §625(6).

- ♦ OUIL, OUID, UBAL, OWI, or OWPD causing death of another, under §625(4).
- ♦ OUIL, OUID, UBAL, OWI, or OWPD causing serious impairment of a body function of another, under §625(5).
- ♦ Child endangerment, under §625(7).
- ♦ OWPD, under §625(8).
- ♦ Any prior enactment of §625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.
- ♦ Former §625b, which provided criminal penalties for OWI.
- ♦ Operating a commercial motor vehicle with an unlawful bodily alcohol level, under §625m.